## SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

CV 2002-016584 12/18/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

| FILED:       |              |
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| FADIL MESIC  |              |
| #99975       |              |
| P O BOX 5003 |              |
| DOUGLAS AZ   | 2 85608-5003 |

v.

FADIL MESIC

GENE HEWITT, et al.

GENE HEWITT 2122 W BEHREND DR PHOENIX AZ 85027

KAREN HEWITT 2122 W BEHREND DR PHOENIX AZ 85027 PHX JUSTICE CT-NW REMAND DESK CV-CCC

## MINUTE ENTRY

This Court has jurisdiction of this civil appeal from the Northwest Phoenix Justice Court pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement and the Court has held this matter pending receipt of a responsive brief by Appellees, Gene and Karen Hewitt. No responsive memorandum has been filed. It also appears that Appellant filed his memorandum with the Northwest Phoenix Justice Court. This Court has considered that memorandum and the disorganized file submitted by the Northwest Phoenix Justice Court.

The only issue raised by Appellant, Fadil Mesic, is that the trial court erred in denying his motion to appear telephonically at a comprehensive pretrial conference and mediation session. Appellant Mesic, who is also the Plaintiff in this action against the Hewitt's, is incarcerated in the custody of the Arizona Dept. of Corrections. When he received notice of a comprehensive Docket Code 019

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pretrial conference and mediation session, he timely filed a request to appear telephonically. The trial judge denied that motion without explanation on June 18, 2002. Thereafter, Appellant filed a Motion for Reconsideration which was denied. However, when Appellant failed to appear for the mediation/comprehensive pretrial conference on June 26, 2002, the following day the trial judge dismissed the case without prejudice.

Clearly, the trial court erred in denying Appellant's request to appear telephonically since he was incarcerated in the custody of the Arizona Dept. of Corrections. Appellant's request was reasonable and timely, and the record does not support any reason for denying Appellant's request. Further, to deny Appellant the opportunity to participate in a court proceeding telephonically and to dismiss his case, is a clear denial of Appellant's right of access to the court.

IT IS THEREFORE ORDERED reversing the trial court's order of June 27, 2002, dismissing the case without prejudice.

IT IS FURTHER ORDERED remanding this matter back to the Northwest Phoenix Justice Court, with instructions to reschedule the case for a comprehensive pretrial conference and mediation and to permit Appellant to participate telephonically in those proceedings and all others.